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Supreme Court No. 80420-6

SUPREME COURT
OF THE STATE OF WASHINGTON

MUTUAL OF ENUMCLAW INSURANCE COMPANY,

Respondent,

v.

T & G CONSTRUCTION, INC., and
VILLAS AT HARBOUR POINTE OWNERS ASSOCIATION

Petitioners.

RESPONDENT'S ANSWER TO PETITIONERS' MOTION
TO STRIKE PORTIONS OF ITS REPLY IN SUPPORT
OF MOTION TO DISMISS

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**I. THE REPLY PROPERLY RESPONDED TO ARGUMENTS IN
PETITIONERS' ANSWER TO MOTION TO DISMISS**

Petitioners' Motion to Strike Sections 1 – 3 of Enumclaw's Reply Brief contends that those sections improperly raise new issues. This is not so. Each of those sections respond to specific argument in the Petitioners' Answer to the Motion to Dismiss.

Section 1 of the Reply calls attention to the Answer's repeated mischaracterization of the basis for the Motion to Dismiss. It corrects the Association's claim that the Motion depends entirely upon the premise that the trial court lacked jurisdiction in the companion Construction Defect suit. (Petitioners' Answer, Section C, Page 5.) That inaccuracy was the subject of this challenged section of the Reply.

Section 2 of the Reply responds to Petitioners' argument that this court possesses *in personam* jurisdiction even though the entity whose status is in question was non-existent. Petitioner argued that this Court has such jurisdiction because a judgment was entered against the non-existent entity in a companion Construction Defect case that this Court declined to review. (Answer, Section D, Page 6.) Section 2 of the Reply points out the fallacy of this particular argument.

Section 3 of the Reply responds to the Petitioners' challenge to the reasoning of *Picardo v. Peck*, 95 Wn. 474 (1917) and the Answer's

assertion that *Picardo* “fails to differentiate between ‘subject matter’ and ‘*in personam*’ jurisdiction.” (Answer, Pages 7 - 9.) Section 3 of the Reply confronts this argument head-on by discussing the “subject matter” and “*in personam*” jurisdiction dichotomy raised in the Petitioners’ Answer.

II. THIS COURT’S JURISDICTION REGARDING THIS CASE WAS CLEARLY CHALLENGED IN THE MOTION TO DISMISS

Petitioners’ complain that the Motion to Dismiss did not alert them to the jurisdictional challenge to hear *this* case as opposed to the jurisdictional questions regarding the companion Construction Defect lawsuit. The petitioners ignore both the caption and the plain language of the Motion.

The caption cannot be ignored. It announces itself as a **Motion to Dismiss this Case for Lack of Jurisdiction**. (Supplemental Brief and Motion to Dismiss, Section IV, Page 16.) The body of the Motion states that the jurisdiction question “that was present in the Construction case is present in this Coverage case as well.” It goes on to repeatedly refer to “this lawsuit” and that “this Court” lacks jurisdiction to proceed in this case. Petitioner was not misled.

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III. CONCLUSION

The challenged sections of the Reply Brief properly respond to

Petitioners' Answer to Motion to Dismiss. The Motion to Dismiss plainly

challenged this Court's jurisdiction to hear *this* case and the Motion to

Strike Portions of the Reply should be denied.

Respectfully submitted 22nd day of May, 2008.

HACKETT, BEECHER & HART

/s/ Original Signature on File

James M. Beecher, WSBA #468

Brent W. Beecher, WSBA #31095

Attorneys for Respondent

CERTIFICATE OF SERVICE

The undersigned declares under the penalty of perjury that on Friday, May 22, 2008, she caused a copy of Respondent's Answer to Petitioners' Motion to Strike Portions of its Reply in Support of Motion to Dismiss to be served on the following counsel:

Daniel Zimberoff
BARKER – MARTIN
719 – 2nd Avenue, Suite 1200
Seattle, WA 98104

/s/ Original Signature on file

Linda Voss

Hackett, Beecher & Hart

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Dear Clerk: Attached for filing is Respondent's Answer to Petitioners' Motion to Strike Portions of its Reply i Support of Motion to Dismiss .

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T & G CONSTRUCTION, INC., and VILLAS AT HARBOUR
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